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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Civil Case No. C 07-3908 SBA

KLAMATH RIVERKEEPER, a project of
the Klamath Forest Alliance, a non-profit
public benefit corporation organized under
the laws of the State of California,

Plaintiff,

v.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, STEPHEN L.
JOHNSON, as Administrator of the United
States Environmental Protection Agency,
WAYNE NASTRI, as Regional
Administrator of the United States
Environmental Protection Agency, Region 9,

Defendants.

ANSWER

1 Defendants United States Environmental Protection Agency, Stephen L. Johnson,
2 Administrator, and Wayne Nastri, Regional Administrator (collectively "EPA"), by and through
3 the undersigned counsel, hereby answer Plaintiff's Complaint ("Complaint").

4 **GENERAL DENIAL**

5 Except as expressly admitted herein, EPA denies each and every allegation in the
6 Complaint.

7 **SPECIFIC RESPONSES**

8 EPA responds to the correspondingly numbered paragraphs of the Complaint as follows:

9 **INTRODUCTION**

10 1. The allegations contained in Paragraph 1 consist of Plaintiff's characterization of
11 its claim and legal conclusions, to which no response is required.

12 **JURISDICTION**

13 2. The allegations contained in Paragraph 2 constitute legal conclusions, to which no
14 response is required.

15 3. The allegations contained in the first, third, fourth and fifth sentences of
16 Paragraph 3 constitute legal conclusions, to which no response is required. To the extent these
17 sentences contain factual allegations, EPA lacks sufficient information to form a belief as to the
18 truth or falsity of those allegations, and on that basis denies them. EPA lacks sufficient
19 information to form a belief as to the truth or falsity of the allegations contained in the second
20 sentence of Paragraph 3, and on that basis denies them.

21 4. The allegations contained in the first sentence of Paragraph 4 constitute legal
22 conclusions, to which no response is required. EPA admits the second and third sentences of
23 Paragraph 4.

24 **VENUE**

25 5. EPA admits that the main office for Region 9 is located at 75 Hawthorne Street,
26 San Francisco, California. The remaining allegations in Paragraph 5 constitute legal conclusions,
27 to which no response is required.

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INTRADISTRICT ASSIGNMENT

6. The allegations contained in Paragraph 6 constitute legal conclusions, to which no response is required.

THE PARTIES

7. EPA is without sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 7, and on that basis denies them.

8. The allegations contained in Paragraph 8 constitute legal conclusions, to which no response is required. To the extent this paragraph contains factual allegations, EPA lacks sufficient information to form a belief as to the truth or falsity of those allegations, and on that basis denies them.

9. The allegations contained in Paragraph 9 constitute legal conclusions, to which no response is required. EPA avers that it is one of several agencies responsible for administering and implementing the Clean Water Act.

10. The allegations contained in Paragraph 10 constitute legal conclusions, to which no response is required.

11. The allegations contained in Paragraph 11 constitute legal conclusions, to which no response is required.

STATUTORY BACKGROUND

12. The allegations contained in Paragraph 12 characterize portions of the Clean Water Act, which speaks for itself, and therefore no response is required.

13. The allegations contained in Paragraph 13 characterize portions of the Clean Water Act, which speaks for itself, and therefore no response is required. To the extent the allegations contained in this paragraph constitute legal conclusions, no response is required.

14. The allegations contained in Paragraph 14 characterize portions of the Clean Water Act, which speaks for itself, and therefore no response is required. To the extent the allegations contained in this paragraph constitute legal conclusions, no response is required.

15. The allegations contained in Paragraph 15 characterize portions of the Clean Water Act's implementing regulations, which speak for themselves, and therefore no response is

1 required. To the extent the allegations contained in this paragraph constitute legal conclusions,
2 no response is required.

3 **FACTUAL BACKGROUND**

4 16. EPA avers that Plaintiff provided written comments and oral testimony during the
5 administrative process of the California State Water Resources Control Board associated with the
6 preparation of the 2006 Clean Water Act Section 303(d) list of water quality limited segments for
7 California. As to the remaining allegations contained in Paragraph 16, EPA lacks sufficient
8 information to form a belief as to the truth or falsity of those allegations, and on that basis denies
9 them.

10 17. EPA admits that on November 24, 2006, the California State Water Resources
11 Control Board submitted to EPA Region 9 for approval a 2006 Clean Water Act Section 303(d)
12 list of water quality limited segments for California. The remaining allegations contained in
13 Paragraph 17 constitute legal conclusions, to which no response is required.

14 18. EPA admits the allegations contained in the first sentence of Paragraph 18. The
15 allegations contained in the second sentence of this paragraph characterize a letter by EPA dated
16 November 30, 2006. This document speaks for itself, and therefore no response is required.

17 19. The allegations contained in Paragraph 19 characterize a letter by EPA dated
18 March 8, 2007. This document speaks for itself, and therefore no response is required.

19 20. The allegations contained in Paragraph 20 characterize a letter by Plaintiff dated
20 April 13, 2007, a Federal Register Notice by EPA dated March 15, 2007, and the North Coast
21 Regional Water Quality Control Board's Basin Plan. These documents speak for themselves,
22 and therefore no response is required. To the extent the allegations contained in the second
23 sentence of this paragraph constitute legal conclusions, no response is required.

24 21. The allegations contained in the text of Paragraph 21 characterize Plaintiff's April
25 13, 2007 letter, which speaks for itself, and therefore no response is required. The allegations
26 contained in the footnote to Paragraph 21 characterize portions of the North Coast Regional
27 Water Quality Control Board's Basin Plan, which speaks for itself, and therefore no response is
28 required. To the extent the allegations contained in this paragraph constitute legal conclusions,

1 no response is required.

2 22. The allegations contained in Paragraph 22 characterize Plaintiff's April 13, 2007
3 letter, which speaks for itself, and therefore no response is required. To the extent the allegations
4 contained in this paragraph constitute legal conclusions, no response is required.

5 23. The allegations contained in the first and second sentence of Paragraph 23
6 characterize Plaintiff's April 13, 2007 letter, which speaks for itself, and therefore no response is
7 required. To the extent the allegations contained in the first and second sentences of this
8 paragraph constitute legal conclusions, no response is required. The allegations contained in the
9 last sentence of this paragraph constitute legal conclusions, to which no response is required.

10 24. The allegations contained in Paragraph 24 constitute legal conclusions, to which
11 no response is required.

12 25. The allegations contained in Paragraph 25 characterize a letter by EPA dated June
13 28, 2007, which speaks for itself, and therefore no response is required.

14 26. The allegations contained in Paragraph 26 characterize a letter by EPA dated June
15 28, 2007, which speaks for itself, and therefore no response is required.

16 27. The allegations contained in Paragraph 27 characterize a letter by EPA dated June
17 28, 2007, which speaks for itself, and therefore no response is required. To the extent the
18 allegations contained in this paragraph constitute legal conclusions, no response is required.

19 28. The allegations contained in Paragraph 28 characterize a letter by EPA dated June
20 28, 2007, which speaks for itself, and therefore no response is required.

21 29. The allegations contained in Paragraph 29 characterize a letter by EPA dated June
22 28, 2007, which speaks for itself, and therefore no response is required.

23 **FIRST CLAIM FOR RELIEF**

24 30. EPA incorporates the previous admissions and denials in Paragraphs 1 through 29
25 above.

26 31. The allegations contained in Paragraph 31 constitute legal conclusions, to which
27 no response is required.

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32. The allegations contained in Paragraph 32 constitute legal conclusions, to which no response is required.

REMEDY

33. The allegations contained in Paragraph 33 constitute legal conclusions, to which no response is required.

PRAYER FOR RELIEF

34 - 37. The allegations contained in Paragraphs 34 through 37 characterize Plaintiff's prayer for relief, to which no response is required. To the extent a response is required, EPA denies the allegations in these paragraphs.

DEFENSES

1. Plaintiff's Complaint, in part or in whole, fails to state a claim upon which relief can be granted.

2. The Court lacks subject matter jurisdiction over Plaintiff's Complaint.

3. The United States has not waived sovereign immunity as to some or all of the allegations in Plaintiff's Complaint.

4. Plaintiff lacks standing to assert the allegations made in its Complaint.

Respectfully submitted,

Dated: November 5, 2007

RONALD J. TENPAS
Acting Assistant Attorney General
Environment & Natural Resources Division

/s/ Rochelle L. Russell
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CERTIFICATE OF SERVICE

I certify that on November 5, 2007, a true and correct copy of the foregoing ANSWER was served electronically via the Court's e-filing system to Counsel of Record.

/s/ Rochelle L. Russell
ROCHELLE L. RUSSELL